Administrative Bulletin
Employer Fair Share Contribution Requirements
114.5 CMR 16.00

September 14, 2007

The purpose of this Administrative Bulletin is to notify employers about changes in the filing requirements for the Employer Fair Share Contribution. The bulletin also clarifies certain provisions of 114.5 CMR 16.00 in response to employer questions.

Background

Chapter 58 of the Acts of 2006, the Massachusetts health care reform legislation, requires that an employer of more than 11 employees that does not make a "fair and reasonable" contribution to the health care premium costs of its employees pay an annual Fair Share Contribution (FSC) of up to $295 per employee. The Division of Health Care Finance and Policy (DHCFP) adopted Regulation 114.5 CMR 16.00 effective October 1, 2006 which contains the criteria to determine whether an employer makes a "fair and reasonable" contribution. Under the regulation, there are two tests to determine whether an employer makes a fair and reasonable premium contribution. There is a primary test under which the employer must demonstrate that at least 25% of its full time employees are enrolled in its health care plan (the "take-up" rate). If the employer does not meet this test, there is a secondary test under which the employer must offer to pay at least 33% of the premium cost for an individual plan for its full time employees (the "offer" rate).

Primary Test Filing Requirements

The Division of Unemployment Assistance (DUA) is the agency responsible for administering the FSC program and collecting the FSC from employers. DUA has issued Regulation 430 CMR 15.00 that governs employer filing requirements and payment of FSC liability. As part of the implementation process, DUA has developed a web-based application for employer filings and conducted a pilot program with 25 employers to evaluate the application. Based on the employer feedback, and in consultation with DUA, the Division has determined that it will revise the data employers must submit with respect to the primary test.

The regulation at 114.5. CMR 16.03 (1) (a) currently requires that the employers calculate the take-up rate using payroll hours as follows:

> 1. Calculation of Percentage. Each Employer shall calculate its percentage of Enrolled Employees for the period from October 1 to September 30 each year. The percentage of Enrolled Employees is calculated by dividing the Total Payroll Hours of Enrolled Full Time Employees as defined below by Total Payroll Hours of Full time Employees.
> 2. Total Payroll Hours of Enrolled Employees. The Employer shall calculate the total payroll hours for which both wages were paid and the employee was enrolled in the health plan. The sum of the payroll hours for each Enrolled Employee is the total payroll hours of enrolled employees.

Employers that participated in the Pilot Program reported to DUA and DHCFP that it was virtually impossible to compile data based on payroll hours or over the hospital fiscal year period, as they generally do not maintain data relating to employees enrolled in health plans in this manner. In many cases employers could only estimate the required information. In response to this employer feedback, and to ensure that employers are encouraged to submit accurate data while at the same time preserving the current primary test, the Division will revise the data required to complete the primary test while

maintaining the existing measurement approach and test. In order to demonstrate employee take-up rate, employers will report the average annual number of full-time employees enrolled in the employer's health plan and the average annual number of full-time employees.

The employer will calculate the average annual employee participation rate as follows:

a. Identify and record the number of full-time employees enrolled in employer's health plan on the last day of each quarter ending on December 31, 2006, March 31, 2007, June 30, 2007 and September 30, 2007

b. Identify and record the number of full-time employees on the employer's payroll on the last day of each quarter ending on December 31, 2006, March 31, 2007, June 30, 2007 and September 30, 2007 (record zero if no employees on payroll).

c. Calculate the average number of full-time employees enrolled in employer's health plan by summing the values recorded in (a.) and dividing by the number of non-zero quarters in (b.)

d. Calculate the average number of full-time employees on the employer's payroll by summing the values recorded in (b.) and dividing by the number of non-zero quarters

e. Calculate average annual employee participation rate by dividing the result of (c.) (average enrolled full- time employees) by the result of (d.)(average total full-time employees)

For these purposes full-time is the *lower of*:

1. the number of weekly payroll hours to be eligible for "full-time health plan benefits": or,
2. 35 payroll hours per week

For these purposes "full-time health plan benefits" means the equivalent level of employer contribution to the employer's health plan that is offered to full-time employees.

Employers of 11 or more full time equivalent employees and who have enrolled employees will also be asked to answer the following questions:

1. How many hours per week does your firm require an employee to work to be considered full-time?
2. What is the minimum number of payroll hours per week that your firm requires an employee to work to be considered eligible for full-time benefits in your firm's health plan?

The Division anticipates that the simplified reporting requirements will not affect the employer's take up percentage to determine FSC liability.

Other Clarifications

Multiemployer Plans

The regulation does not address Multiemployer Health Benefit Plans, to which more than one employer is required to contribute and which are maintained pursuant to one or more collective bargaining agreements. In completing the primary test in the DUA application, an Employer that makes a contribution to a Multiemployer Health Benefit Plan on behalf of a full time employee may include that full time employee in the number of employees enrolled in the health plan. The regulation also does not address employers under contract to provide services to the federal government that are

required to pay employee benefits in accordance with federal requirements. In completing the primary test, an Employer that makes a contribution to a full time employee's benefits in accordance with federal requirements may include that employee in the number of employees enrolled in the health plan.

Employee Leasing Companies

The regulation provides that if there is an agreement between an Employee Leasing Company and a Client Company, "the Employee Leasing Company shall be responsible for calculating and remitting the Fair Share Contribution on behalf of the Client Company." The DUA regulations explicitly provide at 430 CMR 15.11 that "(n)otwithstanding any arrangement between a Client Company and an Employee Leasing Company, the Client Company is the employer for purposes of M.G.L. c. 149, § 188 and 430 CMR 15.00." This is to clarify that the Client Company is also the employer for purposes of 114.5 CMR 16.00 and the determination of the primary and secondary tests.